



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 11, 1996

Mr. Anton E. (Tony) Hackebeil  
District Attorney  
38th Judicial District  
Courthouse Square, #5  
Uvalde, Texas 78801

OR96-1858

Dear Mr. Hackebeil:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 101982.

The 38th Judicial District Community Supervision and Corrections Department (the "CSCD") received a request for eight categories of information concerning several employees and one individual who was formerly under the supervision of the 38th Judicial District Court (the "district court"). The director of the CSCD has stated his intention to release some of this information to the requestor. As for the remainder of the information, you ask us for "clarification of . . . Open Records Decision Number 646 regarding the release of [this] information to the public." You have submitted the information at issue, Attachments A through H, to this office for review.<sup>1</sup>

In Open Records Decision No. 646 (1996), we determined that a community supervision and corrections department is a governmental body for purposes of the act, and that, therefore, its administrative records, such as personnel records and other records reflecting day-to-day management decisions, are subject to the act. *Id.* at 5. On the other hand, we also ruled that specific records regarding individuals on probation and subject to the direct supervision of a court that are held by a community supervision and corrections department are not subject to the act because such records are held on behalf of the judiciary. *Id.* Some of the records at issue here

---

<sup>1</sup>We note that the director of the CSCD has also stated that he does not have "care, custody, and control" of a particular report to which the requestor is seeking access. However, the director forwarded a copy of the report to you, and you submitted the report to this office with your request for an attorney general's decision. Because the CSCD apparently does have possession of a copy of the report, we will disregard the director's statement and determine whether the act requires the CSCD to release the report.

are administrative records of the CSCD and are subject to the act. Others are judicial records that the CSCD holds on behalf of the district court.

The requestor has asked whether a particular individual was ever an inmate of the 38th Judicial Treatment Center. The CSCD has records that are responsive to this inquiry, but the records relate to the district court's supervision of the individual, and the CSCD merely holds these records on behalf of the district court. Attachment G, a district court order, is also a record that the CSCD maintains in the file of an individual who is under the district court's supervision. Because these records are judicial records, the records are not subject to the act, and the CSCD is not required to release the records to the requestor. Although the act does not govern the release of judiciary records, the custodian of judiciary records may, of course, choose to release judicial records that are not confidential by law.

Attachments A through F and H are administrative records of the CSCD and are subject to release under the act. You have not claimed any discretionary exceptions to disclosure for these records. You ask only whether these records are confidential by law. Section 552.101 of the Government Code excepts information from required public disclosure "if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The common-law right of privacy is incorporated into the act by section 552.101. Some of the information contained in Attachments A through F and H is protected by common-law privacy.

For information to be protected by common-law privacy it must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. Attachment D is a resignation letter, portions of which are highly intimate and embarrassing and of no legitimate concern to the public. We have marked these portions of the letter, and the CSCD must withhold this information from disclosure under section 552.101.

Attachments B and C contain information relating to two sexual harassment investigations, some of which is protected by common-law privacy. In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released."

Pages 1 through 3 of Attachment B and pages 1 through 11 of Attachment C contain an

adequate summary of the investigations into the two allegations of sexual harassment. The public has a legitimate interest in the investigations, and releasing the summaries of the investigations will sufficiently serve the public interest. We have de-identified the summaries as required by *Ellen*, and the CSCD must release the de-identified summaries to the requestor. Pages 12 through 32 of Attachment C are the statements of one victim and several witnesses and some other supporting documentation. The CSCD must withhold these documents from disclosure under section 552.101 as information made confidential by common-law privacy.

We note that some of the records at issue make reference to the family members of public employees. In pertinent part, section 552.117 excepts from disclosure information about the family members of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. The CSCD may not, however, withhold this information for a current or former official or employee who made a request for confidentiality under section 552.024 after the request for this information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5. Thus, you must not release the family member information of any official or employee who, before this request was made, asked that this information be kept confidential.

As for the information in Attachments A through F and H that is not protected by common-law privacy or section 552.117, we are unaware of any law that deems this information confidential. Furthermore, this information relates to the job performance of three CSCD employees. The public has a legitimate interest in the job qualifications and job performance of public employees. Therefore, the CSCD must release to the requestor all information that is not protected by the common-law right of privacy or section 552.117.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 101982

Enclosures: Marked documents

cc: Mr. Enrique L. Vasquez  
P.O. Drawer 1248  
Uvalde, Texas 78802-1248  
(w/o enclosures)